

1
2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA
5

6 ERIC ORDUNA,

Case No. 3:20-cv-00641-MMD-CLB

7 Petitioner,

ORDER

8 v.

9 TIM GARRETT, *et al.*,

10 Respondents.
11

12 The Federal Public Defender filed a Notice of Appearance (ECF No. 13) on behalf
13 of Petitioner Eric Orduna.

14 It is therefore ordered that the Federal Public Defender, through C.B. Kirschner,
15 Esq., is appointed as counsel for Petitioner pursuant to 18 U.S.C. § 3006A(a)(2)(B).
16 Counsel will represent Petitioner in all federal proceedings related to this matter, including
17 any appeals or certiorari proceedings, unless allowed to withdraw.

18 It is further ordered that Petitioner will have until September 30, 2021, to file an
19 amended petition and/or seek other appropriate relief. This deadline and any extension
20 thereof may not be construed as implied findings regarding the federal limitation period or
21 a basis for tolling. Petitioner always remains responsible for calculating the running of the
22 federal limitation period and timely asserting claims, without regard to any court-ordered
23 deadlines or extensions. Thus, a petition or amended petition filed within a court-ordered
24 deadline may still be dismissed as untimely if it violates the statute of limitations. See
25 *Sossa v. Diaz*, 729 F.3d 1225, 1235 (9th Cir. 2013).

26 It is further ordered that Respondents must file a response to the amended petition,
27 including potentially by motion to dismiss, within 60 days of service of an amended petition.
28 Petitioner may file a reply within 30 days of service of the answer. However, Local Rule

1 LR 7-2(b) governs the response and reply time to any motion filed by either party, including
2 motions filed in lieu of a pleading.

3 It is further ordered that any procedural defenses Respondents raise to the
4 counseled amended petition must be raised together in a single, consolidated motion to
5 dismiss. Successive motions to dismiss will not be entertained, and any procedural
6 defenses omitted from the consolidated motion to dismiss will be waived. Respondents
7 may not file a response that consolidates their procedural defenses, if any, with their
8 response on the merits. But arguments that an unexhausted claim clearly lacks merit may
9 be included a procedural-defense response. If Respondents seek dismissal of
10 unexhausted claims under 28 U.S.C. § 2254(b)(2) they must: (1) do so in a single motion
11 to dismiss, not in the answer; and (2) specifically direct their argument to the standard for
12 dismissal under § 2254(b)(2) as set forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th
13 Cir. 2005). In short, no procedural defenses, including exhaustion, may be included with
14 the merits in an answer. All procedural defenses, including exhaustion, must be raised in
15 a single motion to dismiss.

16 It is further ordered that, in any answer filed on the merits, Respondents must
17 specifically cite to and address the applicable state court written decision and state court
18 record materials, if any, regarding each claim within the response as to that claim.

19 It is further ordered that Respondents must file the state court exhibits relevant to
20 their response in chronological order.

21 It is further ordered that all state court records and related exhibits must be filed in
22 accordance with LR IA 10-3 and LR IC 2-2 and include a separate index identifying each
23 exhibit by number or letter. The index must be filed in CM/ECF's document upload screen
24 as the base document to receive the base docket number (e.g., ECF No. 10). Each exhibit
25 must then be filed as "attachments" to the base document to receive a sequenced sub-
26 docket number (e.g., Exhibit A (ECF No. 10-1), Exhibit B (ECF No. 10-2), Exhibit C (ECF
27 No. 10-3), and so forth). If the exhibits will span more than one filing, the base document
28 in each successive filing must be either a copy of the index or volume cover page. See LR

1 IC 2-2(a)(3)(A).

2 It is further ordered that, notwithstanding LR IC 2-2(g), paper copies of any
3 electronically filed exhibits need not be provided to chambers or to the staff attorney,
4 unless later directed by the Court.

5 DATED THIS 1st Day of July 2021.

6
7 

8 _____
9 MIRANDA M. DU
10 CHIEF UNITED STATES DISTRICT JUDGE
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28